



U.S. Department of Justice

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Via ECF

Hon. Leda Dunn Wettre, U.S.M.J.
United States District Court
MLK Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: *Baraka v. Habba*, Civ. No. 25-cv-6846
Status of Representation and Adjournment Request

Dear Judge Wettre:

I write regarding the Court's June 6, 2025 conference in the above-referenced matter and to advise the Court on the status of representation for defendants United States Attorney Alina Habba and Special Agent Ricky Patel (collectively, "the Federal Defendants"). I also write with the consent of Plaintiff's counsel to request an adjournment of the conference for ten business days to afford the Federal Defendants an opportunity to obtain representation. I apologize for the short notice of this request.

Because Plaintiff has sued the Federal Defendants in their individual (not official) capacities, they may request personal-capacity representation by the Department of Justice (the "Department") in accordance with the Justice Manual and 28 C.F.R. § 50.15. Representation by the Department "is neither automatic nor compulsory." See Justice Manual § 4-5.412.¹ To obtain Department representation, the Federal Defendants must request representation under the procedures set forth in the Justice Manual and 28 C.F.R. § 50.15(a). The regulation provides that a

¹ <https://www.justice.gov/jm/jm-4-5000-tort-litigation#4-5.412> (last visited Jun. 5, 2025).

government employee may be afforded individual-capacity representation only if the defendant-employee's alleged conduct was within the scope of employment and representation is in the interests of the United States. Additionally, the Department carefully reviews whether "conflicts exist between the legal and factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all." § 50.15(a)(10).

Importantly, "Department attorneys *are forbidden* from providing individual-capacity representation to federal employees unless individual-capacity representation has been approved." *See* Justice Manual § 4-5.410 (emphasis added).² The only exception to this prohibition on representation is that "Department attorneys may seek an extension of time for the defendant employee to respond to a complaint to preserve the status quo, provided the motion makes it clear the Department attorney is appearing for that limited purpose and that a representation decision is pending within the Department." *Id.*

I do not have representational authority for the Federal Defendants. Furthermore, neither Federal Defendant is properly before the Court, as Plaintiff has not served the Federal Defendants or the United States under Rule 4(i). The Federal Defendants are in the process of requesting representation from the Department, and I expect the Department to receive and act on these requests expeditiously. However, until the Federal Defendants are served with process, request representation, and the Department makes the determination that the criteria set forth in 28 C.F.R. § 50.15 are satisfied, Department attorneys, including myself, are prohibited both ethically and by the Department from making any representations on behalf of the Federal Defendants. This prohibition includes appearing before Your Honor at tomorrow's conference and taking a position on behalf of the Federal Defendants as to whether this case is related to other pending cases involving Delaney Hall or should be presided over by a single magistrate judge.

Additionally, permitting the Federal Defendants ten business days to secure representation to participate in a court conference will maintain the status quo since Plaintiff has yet to serve the Federal Defendants under Rule 4(i), and no response to the amended complaint is currently due.

² <https://www.justice.gov/jm/jm-4-5000-tort-litigation#4-5.410> (last visited Jun. 5, 2025).

Should Your Honor have any questions or concerns, please do not hesitate to contact me. Thank you very much for your consideration of this request.

Respectfully submitted,

By: /s/ John F. Basiak Jr. _____
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cc: All counsel of record (via ECF)